IN THE HIGH COURT OF JUDICATURE AT PATNA
SA No.216 of 2005
CONTROLLER OF DEFENCE ACCOUNTS
Versus
JAGDISH PRASAD SINHA
with
SA No.217 of 2005
CONTROLLER OF DEFENCE ACCOUNTS
Versus
ASHOK KUMAR UPANAYA & ORS
with
SA No.218 of 2000
BHUBNESHWAR @ BHUWNESHWAR BHUM
Versus
HARI LAL CHOUDHARY & ANR

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**O R D E R**

**6/ 01-09-2008** These three appeals have been filed by the Controller of Defence Accounts Employees Cooperative House Construction Society Limited ( hereinafter referred to as " the Society" for the sake of brevity), which is plaintiff- respondent- appellant and has challenged the judgments and decree of the learned courts below.

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2. **Second Appeal No. 216 of 2005** arises out of Title Suit No. 288 / 1981 ( 239/1985) which was decreed by the learned Subordinate Judge-4, Patna by common judgment and decree dated 31.05.1991 against which defendant of that suit , namely, Jagdish Prasad Sinha, filed Title Appeal No. 84 of 1991 which was allowed by the learned Additional District Judge, Fast Track Court-3 , Patna by a common judgment and decree dated 27.04.2005.

3. **Second appeal No. 217 of 2005** arises out of Title Suit No. 289 of 1981 ( 238/1985) which was decree by the learned Subordinate Judge-4, Patna by common judgment and decree dated 31.05.1991 against which defendant of that suit, namely, Ashok Kumar Upanaya, filed Title Appeal No. 83 of 1991, which was allowed by the learned Additional District Judge, Fast Track Court-3, Patna by a common judgment and decree dated 27.04.2005.

4. **Second Appeal No. 218 of 1985** arises out of Title Suit No. 290 of 1981 ( 240/1986) which was decreed by the learned Subordinate Judge-4, Patna by common judgment and decree dated 31.05.1991 against which the defendants of that suit, namely, Akhileshwar Prasad Singh and others filed Title Appeal No. 82 of 1991 which was allowed by the learned Additional District Judge, Fast Track Court-3, Patna by a common judgment and decree dated 27.04.2005.

5. Learned Trial Court ordered the aforesaid three suits to be tried together, whereafter all of them were heard together and were decided by a common judgment dated 31.05.1991. Thereafter Title Appeals filed by the defendants were also ordered to be tried together, whereafter all the three Title Appeals were heard analogous and were decided by a common judgment dated 27.04.2005. In the said circumstances all the aforesaid three second appeals are being heard together under Order 41 Rule 11 of the Code of Civil Procedure and this common order is being passed therein.

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6. All the aforesaid three suits were filed by the same appellant for the relief against the respective defendants- appellants-respondents of each suit for declaration that the sale deeds dated 28.11.1980 executed by the last defendant-respondent-respondent, Ram Sohawan Prasad, Ex. Co-opted Chairman of the Society were illegal, void, without authority and conferring no right or title upon the executantees, as the said society was not functioning at the relevant time and he was not competent to execute the sale deeds which were also in contravention of the provision of Bye-laws of the Society.

7. On the other hand both sets of defendants contested the claim of the plaintiffs and submitted that the Society was functioning at the relevant time under the Chairmanship of the person who had executed the sale deeds as he was fully authorized to execute that and several other similar

sale deeds have been executed by the same person but they were never challenged by the plaintiffs.

8. In all the three memorandum of these second appeals the appellants have raised the same questions claiming to be substantial questions of law, which are as follows :

> **(a)** Whether defendant no.2 who had been elected in the managing committee constituted on 25.07.1972 and co-opted as Chairman on 10.03.1973 had any locus standi to continue in the office of the management of the society in view of the Ordinance promulgated in the year 1973, 74, 75 and onwards ?
>
> **(b)** Whether the managing committee so constituted in the year 1972 stood dissolved in the year 1975 and whether the office-bearers or the members of the dissolved managing committee had any locus to manage the affairs of the society and moreso to execute sale deed in favour of the defendants no.1 ?
>
> **( c)** Whether the sale deed executed in favour of defendant no.1 by defendant no.2 in the capacity of Chairman in the year 1980, much after the dissolution of the managing committee, was void and whether the defendant no.1 acquired any right, title and interest on the basis of such void document ?
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> **(d)** Whether the transfer made by defendant no.2 in clear contravention of Bye-law No.26 without there being any amendment in the bye-laws by the competent authority was void ?
>
> **(e)** Whether the bye-laws of the society govern internal management, business and administration of the Society and is binding upon the members and whether the so-called resolution (Ext. 8/1) which had never been registered by the competent authority in terms of section 25 and 26 of the Act was void ?
>
> **( f )** Whether the interpretation of various provisions of the bye-laws like 26, 34 and 44(iv) by the Court of appeal below is misconceived and erroneous both in law and on facts ?
>
> **(g)** Whether the judgment and decree of the court of appeal below being contrary to law is illegal ?

9. With regard to the aforesaid questions reliance has been placed by the appellants on the proviso to Sub-section (8) of Section 14 of

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the Bihar and Orissa Co-operative Societies Act, 1935 ( hereinafter referred to as "the Act" for the sake of brevity ) as amended vide Ordinance No.40 of 1979. The said Sub-section (8) of Section 14 of the Act reads as follows:-

> " (8) Notwithstanding anything contained in the Rules of the Bye-laws, new office-bearers shall be elected in place of those who so cease to hold office under the provisions of sub-section (7) at a special general meeting of the society called for the purpose within 90 day of the date of commencement of the Bihar Co-0perative Societies (Sixth Amendment) Ordinance, 1974:
>
> Provided that the duties of the office-bearers who have ceased to function under the provisions of sub-section (7) shall be performed, until new office-bearers are elected, by such person or persons as may be appointed by the Registrar and pending such appointment by the person or persons appointed by the Assistant Registrar, Co-operative Societies within whose jurisdiction the society is situated :
>
> Provided further that if such election is not held within 90 days, the managing committee shall be deemed to have been superseded within the meaning of section 41 of the Act, and thereafter the business of the society shall be carried on in the manner provided by that section."

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10. In the last proviso to the aforesaid sub-section it has been mentioned that after supersession of the committee the business of the society shall be carried on in the manner provided under section 41 of the Act. Section 41 of the Act reads as follows:

> "41. **Supersession of managing committee.- (1)** If, in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society, he may , by order in writing after giving the managing committee an opportunity to state its objections, if any, dissolve [ for any period not exceeding six months] the managing committee and order that all or any of its members shall be disqualified from being elected to the managing committee of the society for a period to the specified in the order not exceeding three years :
>
> Provided that the Registrar may from time to time extend the period specified in such order for further periods not exceeding one year at a time, and not exceeding in the aggregate, two years.
>
> Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.
>
> [ (2) When a managing committee is dissolved under sub-section (1), the Registrar shall appoint person or persons on such remuneration, if any, as he may fix, to carry on the

business of the society, and such person or persons shall, subject to any direction issued by the Registrar from time to time, exercise all the powers and perform all the duties which may under this Act, the rules and the bye-laws, be exercised or performed by the managing committee or any officer of the society.

(3) The Registrar shall, within such period from the date of the order under sub-section (1) as may be prescribed by the rules, require such person or persons to call a general meeting of the society at such time and place at the headquarters of the society and to require the society to elect a fresh managing committee and to take into consideration such matters, as he may direct, and any meeting convened under this sub-section shall have all the powers of a general meeting convened under the bye-laws of the society.]

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to order the winding up of a society under section 42 or to cancel the registration of the society under sub-section (8) of section 44.

(5) An appeal shall lie from an order of the Registrar under sub-section (1) to the State Government on application made by any member of the Managing Committee within three months from the date of communication of the order to the registered society concerned. The of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar, shall be final."

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11. Sub-section (8) was not included in Section 14 of the original Act and it was added only in the year 1979 vide Ordinance no.40. However, learned counsel for the respondents has specifically averred that that the life of an ordinance is limited and the sale deeds were executed much beyond the said period, i.e., on 30.11.1980 and hence the provision of section 8 or its proviso could not be made applicable to the said sale deeds. In this regard the appellants have completely failed to show by any material whatsoever that the ordinance of 1979 was revalidated or extended for any further period covering the date on which the sale deeds in question were executed. Furthermore, the question of supercession of the managing committee has neither been raised by the appellant in his plaint nor any material has been produced with respect thereto , although the provision of law is dependant on facts regarding any order or direction of supersession by the Registrar or any election thereafter but there being no pleading with

respect thereto by the plaintiff the court cannot make out a third case without any basis.

12. In any view of the matter section 41 of the Act lays down a procedure for supersession or dissolution of the managing committee and also the steps which are to be taken by the authorities concerned after dissolution or supersession of the managing committee but no pleading or evidence has been produced by the plaintiff to show that any such procedure had ever been adopted or any order has been passed by the authorities concerned before or after the alleged supersession of the managing committee in 1975 as claimed by the appellants. In view of the 1st proviso to section 14(8) of the Act some procedures had to be followed, but even as per the plaintiff's claim after the alleged supersession neither any person was appointed by the Registrar to look after the society nor it is the plaintiff's case that the Assistant Registrar of the Cooperative Society ever looked after it. Furthermore Section 41 of the Act provides that dissolution of Managing Committee could be only for a period of six months which may be extended from time to time by the Registrar upto two years only, but there is neither any pleading nor any evidence of the plaintiff in that regard. On the other hand the defendants clearly pleaded and proved that the managing committee of the society formed in the year 1972 continued functioning under the Chairmanship of Ram Sohawan Prasad till after 1980 who was duly authorized by the members of the committee to sell the land of the society to intending purchasers for taking out the society from dire strait of financial constraints . It has also been proved that during the said period more than a dozen sale deeds were executed by the same person but the plaintiff did not raise any objection with respect thereto and chose only the defendants of the instant suits for challenging their sale deeds.

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13. So far the question with regard to sale of land to

strangers is concerned, learned counsel for the appellants has relied upon two clauses of the Bye-laws of the society, namely, clause-26 and clause-44, which read as follows:

> " Clause- 26 : (i) All documents creating a charge or obligations on the society shall be signed by the chairman or vice-chairman and the secretary or any three member of the Board of Directors.
> (ii) The chairman or the vice-chairman and the secretary and any two members of the Board of Directors shall be competent, to sign cheques or any orders of any value."
>
> Clause- 44 : It shall be competent for the Board of Directors:
>
> (i) to buy land either from or through Government or otherwise.
> (ii) To render the lands so purchased fit for habitations.
> (iii) To lay cut streets, made and parcel out the land as house sites;
> (iv) To sell or lease or otherwise deal with the sites to members or others on such terms as it may determine; and
> (v) To provide or maintain facilities for water-supply drainage, lighting, community hall, library and similar works of common utility."

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14. So far clause-26 of the said bye-laws is concerned, it is clearly with respect to creating a charge or obligation on the society and is not with respect to the transfer of lands of the society and hence the same is not applicable to the facts and circumstances of the case. So far clause- 44 of the said bye-laws is concerned, sub-clause (iv) is with respect to sale or lease of land of the society and in the Act it is specifically mentioned that such transfers can be made to members or others. Learned counsel for the appellant has tried to make out a claim that the word "others" used in the said sub-clause meant only the members of the society or the employees of the department. However, after considering the entire bye-laws, the Act and its rules it does not appear from any where that the term " others" used therein has anywhere been limited only to the members of the society or the employees of the department. The main aim of the said clause is to take out

the society from dire financial straits and for that purpose only the term "others" has been used therein so that the society can get the maximum price of its lands. In the said circumstances and on the said ground the sales made in favour of persons who were neither members of the society nor were employees of the department, cannot be legally challenged .

15. The learned court of appeal below after considering the pleadings and evidence of the parties have also come to the specific conclusion that Ram Sohawan Prasad was the chairman of the society from 10.03.1973 till 30.11.1980 and there was nothing on record to prove that the society was ever superseded and that the management of the society was taken by the Registrar. The learned court below has also found that the said Ram Sohwan Prasad was duly authorized by the committee to execute the said sale deeds in question as per the specific provisions of law.

16. In the aforesaid facts and circumstances this Court does not find any illegality in the impugned judgments and decrees passed by the learned court of appeal below, nor does this Court find any substantial question of law involved in the above mentioned three second appeals, which are accordingly dismissed at this stage of Hearing under Order XLI Rule 11 of the Code of Civil Procedure.

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**B.Tiwary/** **(S.N Hussain,J)**